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FUNCTION OF PRESIDENT OF COOPERATIVE AT MEETINGS

In the February issue of the REA Law Journal, there appeared an article entitled "The Right of the President of a Cooperative to Vote at Directors' Meetings." The editors of the Journal in discussing the problem treated it purely from a legal and parliamentary viewpoint. Consequently, we were very much interested in a comment we received from Udo Rall, REA Cooperative Consultant. Mr. Rall attacks the matter from a broad aspect, going beyond the legal right of the president to vote. Since his comment supplements the article we are setting it forth verbatim:

"Your lead article in the February 1940 issue of the REA Law Journal is very good and should prove very helpful. However, I desire to offer a few comments for the purpose of further clarification of the problem.

"The president of an REA cooperative usually functions in a dual capacity at a meeting, namely as president and as chairman of the meeting. This holds true as a rule for both board meetings and members' meetings. As a member of the cooperative, he is entitled to exercise his voting privilege, regardless of the fact that he is also the president of the cooperative and of the board. However, if he is chairman of a meeting he is supposed to act as a moderator and coordinator rather than as a partisan. It is the chairman's function to make the democratic process work. This means that he must encourage free and full discussion of any proposed action before it is voted upon. He holds a strategic position which he should not abuse by attempting to force his opinion of the group. This is the chief reason for the generally accepted practice that a chairman refrains from voting except when voting is done by secret ballot or when the vote will decide the issue.

"Whenever action is taken at a board meeting on a voice vote so close that the chairman's vote is of importance, it is desirable to record the vote of each person voting so that the information is available for future reference. But such a close vote is not desirable. It is generally wiser for a chairman to open up the question again and to encourage further discussion leading to a more thorough understanding of the proposed action. While even more extended discussion may not result in a unanimous decision, the chances are that it will at least result in a clear-cut majority either for or against the motion. An action taken on a clear majority vote without the vote of the chairman is preferable from the democratic standpoint to an action taken on a vote so close that the chairman's vote becomes the deciding vote."

ADMINISTRATIVE INTERPRETATIONS

Taxation - Mortgages of Federal Agencies

The Attorney-General of Alabama has ruled that mortgages given to instrumentalities or agencies of the United States are not subject to the state filing tax. Op. Att'y Gen. Ala., C.C.H. Cond. Sale & Chattel Mtge. Serv. para. 10,750 (1940).

Acquisition of Electrical Facilities by State Governmental Agencies

The Booth Act (Ala. Act. No. 244, S.B. No. 300, approved August 18, 1939) provides for the acquisition of electrical utilities by municipalities "or other governmental agencies." The Attorney-General has ruled that the latter term does not include schools or hospitals, etc., because the rule of ejusdem generis confines the term to agencies similar in nature to municipalities. Therefore the act is applicable only to such governmental agencies as municipalities, counties, improvement authorities, etc. Op. Att'y Gen. Ala., C.C.H. Pub. Util. Serv. para. 318 (1940).

RECENT CASES

Federal Funds - Attempt to challenge Validity of a Federal Grant

Plaintiff public utility brought this action to enjoin the defendant city from accepting a grant from P.W.A. The grant was intended to aid the city in the erection of a power plant which would compete with the plaintiff. The plaintiff has a 20 year non-exclusive franchise to operate a distribution system within the city. The lower court dismissed the complaint. Held, affirmed. Central Ill. Public Service Co. v. Bushell, 109 F. (2d) 26 (C.C.A. 7th, 1940).

The court rules that a non-exclusive franchise to operate as a public utility does not grant a right to be free from competition and subsequent competition by the municipality that granted the non-exclusive franchise is in no way invalid.

The plaintiff contends that the grant by P.W.A. is illegal and therefore the state enabling legislation "is polluted and contrary to Illinois public policy." However, the court points out that under well accepted rules the plaintiff has no standing to contest a federal grant of funds and the court will not accept this cleverly fashioned attempt to circumvent that rule of law.

Municipalities - Service within another Municipality

Municipality brought an action to rescind a contract by which it acquired an electric distribution system outside the corporate limits and obligated itself to serve consumers not only outside its own limits but also within the limits of another municipal corporation. The ground urged for rescission was that the contract was ultra vires since the plaintiff had no power to serve consumers within another municipality. Held, rescission denied. Curtis v. Maywood Light Co., 288 N.W. 503 (Neb. 1939).

"On principle, it would follow that, as the business of maintaining and operating a municipal electric plant and selling current therefrom is wholly outside the truly governmental powers and functions of such city, the place of furnishing or receiving the electric current would be in no manner controlled by the situs of the same with reference to the corporate boundaries of the cities involved in the transaction.

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"The following authorities support the contention that, where a municipality is given power under the circumstances then existing to furnish public utility service beyond its corporate limits, it has the right to provide service within the corporate boundaries of another municipal corporation. Crandall v. Town of Safford, 56 P. (2d) 660; Kansas Gas & Electric Co. v. City of McPherson, 146 Kan. 614, 72 P. (2d) 985; Muir v. Murray City, 186 Pac. 433; City of Colorado Springs v. Colorado City, 94 Pac. 316; City of Omaha v. Omaha Water Co., 218 U.S. 180, 30 S. Ct. 615, 54 L. Ed. 991. The conclusion therefore follows that the contract sought to be rescinded as ultra vires, under the terms of the statutes controlling, was clearly within the powers of the city of Curtis to make. The judgment of the trial court as to all parties to this proceeding is in all respects correct, and it is affirmed."

Federal Government - Waiver of Rights by Agents -- Application of State Statutes of Limitation

A borrowed money from the Farm Credit Administration and executed, as security therefor, a chattel mortgage which provided that the mortgagor could not dispose of his cotton without the written consent of the Governor of the Farm Credit Administration. X purchased the cotton. The U. S. brought an action against X in tort for conversion. X defends: 1. That the U. S. through its agents waived its right that none of the cotton be sold. 2. That the present suit was barred by the Statute of Limitations. Held, judgment for the U. S. United States v. Thomas, 107 F. (2d) 765 (C.C.A. 5th, 1939).

The court states: "Agents or employees of the government had no authority to waive the chattel mortgage lien. Waiver was not a good defense to this suit." On the second point the court rules that the United States is assisting agriculture and as such is asserting sovereign rights. In such case it is "settled beyond controversy that the United States...is not subject to either state statutes of limitations or to laches." Quoting from Chesapeake Canal Co. v. United States, 250 U. S. 123 (1918).

Torts - Duty of One Maintaining Electric Power Lines to Use Device to Prevent Contact with Telephone Lines

Telephone Company maintained a cable running along a street. Public Service Company maintained power lines which crossed the telephone lines at right angles and some eight or ten feet above them. During a heavy storm several of the power lines broke and one came in contact with the telephone line. The plaintiff was at her home engaged in a long-distance telephone conversation. The contact of the power line with the telephone line created an explosive noise which severely injured the plaintiff. The plaintiff brings this action for damages against the Telephone Company and the Power Company. Judgment for defendants. Cooley v. Public Service Co., 10 A. (2d) 673 (N. H. 1940).

There was no proof of the Power Company's negligence. The contention of the plaintiff was that some device should have been used by the defendant to prevent the contact. The suggested device is a wire-mesh basket to catch falling wires. However, experience has demonstrated that such devices create the danger that a circuit breaker would not operate, therefore subjecting passers-by to the danger of electrocution. The defendant thus had a duty to persons passing on the street.

"The defendant's duty cannot, in the circumstances, be to both. If that were so, performance of one duty would mean non-performance of the other. If it be negligent to save the life of the highway traveler at the expense of bodily injury resulting from fright and neurosis of a telephone subscriber, it must be equally negligent to avoid the fright at the risk of another's life. The law could tolerate no such theory of 'be liable if you do and liable if you don't.' The law does not contemplate a shifting duty that requires care towards A and then discovers a duty to avoid injury incidentally suffered by B because there was due care with respect to A. Such a shifting is entirely inconsistent with the fundamental conception that the duty of due care requires precisely the measure of care that is reasonable under all the circumstances. 2 Restatement Torts, §§291-295.

"The duty to take precautions rests upon the rule of reasonable anticipation, even though that rule does not prevail as to damages once the duty appears. If the duty to the man in the street be forgotten for the moment, the duty to the plaintiff would depend upon anticipation of bodily injuries because of fright at a noise. Of a defendant in such case it is to be remarked that 'the likelihood that his conduct will cause bodily harm involves two uncertain factors, the chance that his act will cause the /emotional/ disturbance and the chance that the disturbance if it occurs will result in bodily harm.' 2 Restatement, Torts, §306, comment c. The chance of physical contact with a live wire in the street, with consequent electrocution, is much less remote and complicated than that. It is clearly more foreseeable and is the controlling one of all the circumstances for present purposes. In this particular case, it could not be found that it would be reasonable to neglect the protection of these more obviously at risk than the plaintiff.

"It is not doubted that due care might require the defendant to adopt some device that would afford protection against emotional disturbances in telephone-users without depriving the traveling public of reasonable protection from live wires immediately dangerous to life. Such a device, if it exists, is not disclosed by the record. The burden was upon the plaintiff to show its practicability. Since the burden was not sustained, a verdict should have been directed for the defendant."